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UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

WASHINGTON TOXICS COALITION, et  
al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
INTERIOR, et al.,

Defendants.

and

CROPLIFE AMERICA,

Defendant-Intervenors,

and

WASHINGTON FRIENDS OF FARMS  
AND FORESTS, et al.,

Defendant-Intervenors.

No. 04-CV-1998

**ANSWER OF WASHINGTON FRIENDS  
OF FARMS AND FORESTS,  
WASHINGTON STATE POTATO  
COMMISSION, NATIONAL POTATO  
COUNCIL, WASHINGTON STATE  
FARM BUREAU, IDAHO FARM  
BUREAU FEDERATION,  
WASHINGTON ASSOCIATION OF  
WHEAT GROWERS, WASHINGTON  
STATE DAIRY FEDERATION,  
WESTERN WASHINGTON GOLF  
COURSE SUPERINTENDENTS  
ASSOCIATION, HOP GROWERS OF  
WASHINGTON, AND WASHINGTON  
STATE HORTICULTURAL  
ASSOCIATION**

## BACKGROUND

On September 23, 2004, Plaintiffs filed this action challenging Defendants' joint counterpart regulations, promulgated at 69 Fed. Reg. 47,732, 47,736 (Aug. 5, 2004). Intervenor-Applicants Washington Friends of Farm and Forests, Washington State Potato Commission, National Potato Council, Washington State Farm Bureau, Idaho Farm Bureau Federation, Washington Association of Wheat Growers, Washington State Dairy Federation, Western Washington Golf Course Superintendents Association, Hop Growers of Washington, and Washington State Horticultural Association (the Stewards) have moved to intervene in order to ensure the joint counterpart regulations remain in place. Pursuant to Federal Rule of Civil Procedure 24(c), the Stewards submit this Answer to Plaintiffs' complaint. The numbered paragraphs in this Answer correspond to those in Plaintiffs' complaint.

## INTRODUCTION

1. The first sentence characterizes Plaintiffs' case, which requires no response. The second sentence characterizes the challenged joint counterpart regulations and Alternative Consultation Agreement (Consultation Agreement), which speak for themselves and are the best evidence of their content. The Stewards deny any allegation inconsistent with those documents. The third sentence states a legal conclusion which requires no response. Finally, the fourth sentence further characterizes Plaintiffs' lawsuit and states a legal conclusion, neither of which requires a response. Insofar as Paragraph 1 contains factual allegations, the Stewards deny those allegations.

## PARTIES

2. The Stewards lack sufficient information about Plaintiffs to form a belief as to the truth of the information contained in Paragraph 2.

3. The Stewards lack sufficient information about Plaintiffs to form a belief as to the truth of the information contained in Paragraph 3.

4. The Stewards lack sufficient information about Plaintiffs to form a belief as to the truth of the information contained in Paragraph 4.

5. The Stewards lack sufficient information about Plaintiffs to form a belief as to the truth of the information contained in Paragraph 5.

6. The Stewards lack sufficient information about Plaintiffs to form a belief as to the truth of the information contained in Paragraph 6.

7. The Stewards lack sufficient information about Plaintiffs to form a belief as to the truth of the information contained in Paragraph 7.

8. The Stewards lack sufficient information about Plaintiffs to form a belief as to the truth of the information contained in Paragraph 8.

9. The Stewards lack sufficient information about Plaintiffs to form a belief as to the truth of the information contained in Paragraph 9.

10. The Stewards lack sufficient information about Plaintiffs to form a belief as to the truth of the information contained in Paragraph 10.

11. The Stewards lack sufficient information about Plaintiffs to form a belief as to the truth of the information contained in Paragraph 11.

12. Admitted.

13. Admitted.

14. Admitted.

## **JURISDICTION**

15. The first sentence characterizes Plaintiffs' case, which requires no response. The second sentence states a legal conclusion, which requires no response.

## **BACKGROUND**

16. Paragraph 16 characterizes the joint counterpart regulations and Consultation Agreement. Those documents speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with those documents.

## **ESA SECTION 7 CONSULTATION FRAMEWORK**

17. Paragraph 17 describes the framework for consultation under section 7 of the Endangered Species Act (ESA) and implementing regulations. The statute and regulations speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the ESA or the cited regulations.

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18. Paragraph 18 describes the framework for consultation under section 7 of the ESA and implementing regulations. The statute and regulations speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the ESA or the cited regulations.

19. Paragraph 19 describes the framework for consultation under section 7 of the ESA and implementing regulations. The statute and regulations speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the ESA or the cited regulations.

20. Paragraph 20 describes the framework for consultation under section 7 of the ESA and implementing regulations. The statute and regulations speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the ESA or the cited regulations.

21. Paragraph 21 describes the framework for consultation under section 7 of the ESA and implementing regulations. The statute and regulations speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the ESA or the cited regulations.

22. Paragraph 22 describes the framework for consultation under section 7 of the ESA and implementing regulations. The statute and regulations speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the ESA or the cited regulations.

23. Paragraph 23 describes the framework for consultation under section 7 of the ESA and implementing regulations. The statute and regulations speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the ESA or the cited regulations.

24. Paragraph 24 describes the framework for consultation under section 7 of the ESA and implementing regulations. The statute and regulations speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the ESA or the cited regulations.

25. Paragraph 25 describes the framework for consultation under section 7 of the ESA and implementing regulations. The statute and regulations speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the ESA or the cited regulations.

26. Paragraph 26 describes the framework for consultation under section 7 of the ESA and implementing regulations. The statute and regulations speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the ESA or the cited regulations.

27. Paragraph 27 describes the framework for consultation under section 7 of the ESA and implementing regulations. The statute and regulations speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the ESA or the cited regulations.

28. Paragraph 28 describes the framework for consultation under section 7 of the ESA and implementing regulations. The statute and regulations speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the ESA or the cited regulations.

29. Paragraph 29 describes the framework for consultation under section 7 of the ESA and implementing regulations. The statute and regulations speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the ESA or the cited regulations.

#### **FIFRA BACKGROUND AND FRAMEWORK**

30. Paragraph 30 summarizes provisions of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The statute speaks for itself and is the best evidence of its contents. The Stewards deny any allegations inconsistent with FIFRA.

31. Paragraph 31 summarizes provisions of FIFRA. The statute speaks for itself and is the best evidence of its content. The Stewards deny any allegations inconsistent with FIFRA.

32. Paragraph 32 summarizes provisions of FIFRA. The statute speaks for itself and is the best evidence of its content. The Stewards deny any allegations inconsistent with FIFRA.

33. Paragraph 33 summarizes provisions of FIFRA. The statute speaks for itself and is the best evidence of its content. The Stewards deny any allegations inconsistent with FIFRA.

34. The first four sentences and the sixth sentence summarizes provisions of FIFRA. The statute speaks for itself and is the best evidence of its content. The Stewards deny any allegations of the first four sentences and the sixth sentence inconsistent with FIFRA. The fifth sentence summarizes portions of a General Accounting Office Report, which speaks for itself and is the best evidence of its content. The Stewards deny any allegations of the fifth sentence inconsistent with the cited report. The Stewards lack sufficient information to form a belief as to the truth of the allegations in the seventh sentence.

35. The first three sentences state legal conclusions based on the definition of “action” in 50 C.F.R. § 402.02, to which no response is required. Insofar as those sentences contain factual allegations, those allegations are denied. The Stewards deny the allegations in the fourth sentence.

#### **ALLEGATION CONCERNING EPA ACTIONS**

36. Paragraph 36 describes and characterizes the Environmental Protection Agency’s (EPA) activities, referring to various Federal Register documents. The documents speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the referenced documents.

37. Paragraph 37 describes and characterizes the EPA’s activities, referring to various Federal Register documents. The documents speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the referenced documents.

38. Paragraph 38 describes and characterizes the EPA’s activities, referring to various Federal Register documents. The documents speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the referenced documents.

39. Paragraph 39 describes and characterizes the EPA’s activities, referring to various Federal Register documents. The documents speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the referenced documents.

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40. Paragraph 40 describes and characterizes the EPA's activities, referring to various Federal Register documents. The documents speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the referenced documents.

41. The Stewards lack sufficient information to form a belief as to the truth of the allegations in the first three sentences. The fourth and fifth sentences quote selectively from, and purport to summarize and characterize, the Re-registration Eligibility Determination (Eligibility Determination) for the product Trifluralin, which speaks for itself and is the best evidence of its content. The Stewards deny any allegations of the fourth and fifth sentences inconsistent with the cited Eligibility Determination.

42. Paragraph 42 describes and characterizes the EPA's activities, with reference to a Federal Register document. The Federal Register document speaks for itself and is the best evidence of its content. The Stewards deny any allegations inconsistent with the cited document.

43. Paragraph 43 quotes selectively from, and purports to summarize and characterize, the Eligibility Determination for the product Chlorothalonil, which speaks for itself and is the best evidence of its content. The Stewards deny any allegations inconsistent with the cited Eligibility Determination.

**PREVIOUS LITIGATION CHALLENGING EPA'S  
ACTIONS CONCERNING PESTICIDE REGISTRATIONS**

44. Paragraph 44 characterizes and summarizes various aspects of *Washington Toxics Coalition v. EPA*, No. C01-132C (W.D. Wash.). Insofar as the paragraph contains factual allegations, the Stewards submit the record of that case speaks for itself and is the best evidence of its content. The Stewards deny any allegation inconsistent with the official case record.

45. Paragraph 45 characterizes and summarizes various aspects of *Washington Toxics Coalition v. EPA*, No. C01-132C (W.D. Wash.). Insofar as the paragraph contains factual allegations, the Stewards submit the record of that case speaks for itself and is the best evidence of its content. The Stewards deny any allegation inconsistent with the official case record.

46. Paragraph 46 characterizes and summarizes various aspects of *Washington Toxics Coalition v. EPA*, No. C01-132C (W.D. Wash.). Insofar as the paragraph contains factual

1 allegations, the Stewards submit the record of that case speaks for itself and is the best evidence  
2 of its content. The Stewards deny any allegation inconsistent with the official case record.

3 47. The Stewards admit the first sentence on information and belief. The Stewards lack  
4 sufficient information to form a belief as to the truth of the allegations in the second sentence. The  
5 remaining sentences purport to quote from and summarize a draft letter, which speaks for itself and  
6 is the best evidence of its content. The Stewards deny any allegation inconsistent with the letter.  
7 Furthermore, the draft letter states legal conclusions, to which no response is required.

8 48. Paragraph 48 summarizes a letter from the *Washington Toxics Coalition* Plaintiffs to  
9 EPA, which speaks for itself and is the best evidence of its content. The Stewards deny any  
10 allegation inconsistent with the letter.

11 49. Paragraph 49 cites and characterizes various lawsuits. In as much as Paragraph 49  
12 contains factual allegations, the Stewards submit the records of those lawsuits speak for themselves  
13 and are the best evidence of their content. The Stewards deny any allegation inconsistent with the  
14 official Court records of those proceedings.

### 15 THE COUNTERPART REGULATIONS

16 50. Paragraph 50 consists of Plaintiffs' characterization of the alleged activities and  
17 motivation of "the chemical industry and agricultural interests" concerning the joint counterpart  
18 regulations. Those general and speculative allegations do not merit a response, but in as much as  
19 a response is necessary, the Stewards deny the allegations. Further, the Stewards submit the  
20 regulations provide multiple benefits, including improving protection of listed endangered and  
21 threatened species, efficiently allocating responsibilities among and reducing costs for the  
22 regulating agencies, and decreasing delays and uncertainty encountered in the regulatory process.

23 51. Paragraph 51 selectively quotes from, describes, summarizes, and characterizes a  
24 Federal Register advance notice of proposed rulemaking. The notice speaks for itself and is the  
25 best evidence of its content. The Stewards deny any allegations inconsistent with the notice.

26 52. Paragraph 52 selectively quotes from, describes, summarizes, and characterizes a  
27 Federal Register advance notice of proposed rulemaking. The notice speaks for itself and is the  
28 best evidence of its content. The Stewards deny any allegations inconsistent with the notice.



53. Paragraph 53 selectively quotes from, describes, summarizes, and characterizes a Federal Register advance notice of proposed rulemaking. The notice speaks for itself and is the best evidence of its content. The Stewards deny any allegations inconsistent with the notice.

54. Paragraph 54 selectively quotes from, describes, summarizes, and characterizes documents that discuss EPA's risk assessment process. The documents speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the referenced documents.

55. Paragraph 55 selectively quotes from, describes, summarizes, and characterizes documents that discuss EPA's risk assessment process. The documents speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the referenced documents.

56. Paragraph 56 selectively quotes from, describes, summarizes, and characterizes documents that discuss EPA's risk assessment process. The documents speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the referenced documents.

57. Paragraph 57 selectively quotes from, describes, summarizes, and characterizes documents that discuss EPA's risk assessment process. The documents speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the referenced documents.

58. Paragraph 58 selectively quotes from, describes, summarizes, and characterizes documents that discuss EPA's risk assessment process. The documents speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the referenced documents.

59. Paragraph 59 selectively quotes from, describes, summarizes, and characterizes documents that discuss EPA's risk assessment process. The documents speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the referenced documents.

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1           60. Paragraph 60 selectively quotes from, describes, summarizes, and characterizes  
2 documents that discuss EPA's risk assessment process. The documents speak for themselves and  
3 are the best evidence of their content. The Stewards deny any allegations inconsistent with the  
4 referenced documents.

5           61. Paragraph 61 selectively quotes from, describes, summarizes, and characterizes  
6 documents that discuss EPA's risk assessment process. The documents speak for themselves and  
7 are the best evidence of their content. The Stewards deny any allegations inconsistent with the  
8 referenced documents.

9           62. Paragraph 62 selectively quotes from, describes, summarizes, and characterizes  
10 documents that discuss EPA's risk assessment process. The documents speak for themselves and  
11 are the best evidence of their content. The Stewards deny any allegations inconsistent with the  
12 referenced documents.

13           63. Paragraph 63 selectively quotes from, describes, summarizes, and characterizes  
14 documents that discuss EPA's risk assessment process. The documents speak for themselves and  
15 are the best evidence of their content. The Stewards deny any allegations inconsistent with the  
16 referenced documents.

17           64. Paragraph 64 selectively quotes from, describes, summarizes, and characterizes  
18 documents that discuss EPA's risk assessment process. The documents speak for themselves and  
19 are the best evidence of their content. The Stewards deny any allegations inconsistent with the  
20 referenced documents.

21           65. Paragraph 65 selectively quotes from, describes, summarizes, and characterizes  
22 documents that discuss EPA's risk assessment process. The documents speak for themselves and  
23 are the best evidence of their content. The Stewards deny any allegations inconsistent with the  
24 referenced documents.

25           66. Paragraph 66 selectively quotes from, describes, summarizes, and characterizes  
26 documents that discuss EPA's risk assessment process. The documents speak for themselves and  
27 are the best evidence of their content. The Stewards deny any allegations inconsistent with the  
28 referenced documents.

67. Paragraph 67 selectively quotes from, describes, summarizes, and characterizes documents that discuss EPA's risk assessment process. The documents speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the referenced documents.

68. Paragraph 68 selectively quotes from, describes, summarizes, and characterizes documents that discuss EPA's risk assessment process. The documents speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the referenced documents.

69. Paragraph 69 selectively quotes from, describes, summarizes, and characterizes documents that discuss EPA's risk assessment process. The documents speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the referenced documents.

70. Paragraph 70 selectively quotes from, describes, summarizes, and characterizes documents that discuss EPA's risk assessment process. The documents speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the referenced documents.

71. Paragraph 71 selectively quotes from, describes, summarizes, and characterizes documents that discuss EPA's risk assessment process. The documents speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the referenced documents.

72. Paragraph 72 selectively quotes from, describes, summarizes, and characterizes a Federal Register notice of proposed rulemaking and other Federal Register documents, various proposed regulations, and the Consultation Agreement. The referenced materials speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the referenced materials.

73. Paragraph 73 selectively quotes from, describes, summarizes, and characterizes a Federal Register notice of proposed rulemaking and other Federal Register documents, various proposed regulations, and the Consultation Agreement. The referenced materials speak for

1 themselves and are the best evidence of their content. The Stewards deny any allegations  
2 inconsistent with the referenced materials.

3 74. Paragraph 74 selectively quotes from, describes, summarizes, and characterizes a  
4 Federal Register notice of proposed rulemaking and other Federal Register documents, various  
5 proposed regulations, and the Consultation Agreement. The referenced materials speak for  
6 themselves and are the best evidence of their content. The Stewards deny any allegations  
7 inconsistent with the referenced materials.

8 75. Paragraph 75 selectively quotes from, describes, summarizes, and characterizes a  
9 Federal Register notice of proposed rulemaking and other Federal Register documents, various  
10 proposed regulations, and the Consultation Agreement. The referenced materials speak for  
11 themselves and are the best evidence of their content. The Stewards deny any allegations  
12 inconsistent with the referenced materials.

13 76. Paragraph 76 selectively quotes from, describes, summarizes, and characterizes a  
14 Federal Register notice of proposed rulemaking and other Federal Register documents, various  
15 proposed regulations, and the Consultation Agreement. The referenced materials speak for  
16 themselves and are the best evidence of their content. The Stewards deny any allegations  
17 inconsistent with the referenced materials.

18 77. Paragraph 77 selectively quotes from, describes, summarizes, and characterizes a  
19 Federal Register notice of proposed rulemaking and other Federal Register documents, various  
20 proposed regulations, and the Consultation Agreement. The referenced materials speak for  
21 themselves and are the best evidence of their content. The Stewards deny any allegations  
22 inconsistent with the referenced materials.

23 78. Paragraph 78 selectively quotes from, describes, summarizes, and characterizes a  
24 Federal Register notice of proposed rulemaking and other Federal Register documents, various  
25 proposed regulations, and the Consultation Agreement. The referenced materials speak for  
26 themselves and are the best evidence of their content. The Stewards deny any allegations  
27 inconsistent with the referenced materials.

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79. Paragraph 79 selectively quotes from, describes, summarizes, and characterizes a Federal Register notice of proposed rulemaking and other Federal Register documents, various proposed regulations, and the Consultation Agreement. The referenced materials speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the referenced materials.

80. Paragraph 80 selectively quotes from, describes, summarizes, and characterizes a Federal Register notice of proposed rulemaking and other Federal Register documents, various proposed regulations, and the Consultation Agreement. The referenced materials speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the referenced materials.

81. Paragraph 81 selectively quotes from, describes, summarizes, and characterizes a Federal Register notice of proposed rulemaking and other Federal Register documents, various proposed regulations, and the Consultation Agreement. The referenced materials speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the referenced materials.

82. Paragraph 82 selectively quotes from, describes, summarizes, and characterizes a Federal Register notice of proposed rulemaking and other Federal Register documents, various proposed regulations, and the Consultation Agreement. The referenced materials speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the referenced materials.

83. Paragraph 83 selectively quotes from, describes, summarizes, and characterizes a Federal Register notice of proposed rulemaking and other Federal Register documents, various proposed regulations, and the Consultation Agreement. The referenced materials speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the referenced materials.

84. Paragraph 84 selectively quotes from, describes, summarizes, and characterizes a Federal Register notice of proposed rulemaking and other Federal Register documents, various proposed regulations, and the Consultation Agreement. The referenced materials speak for

1 themselves and are the best evidence of their content. The Stewards deny any allegations  
2 inconsistent with the referenced materials.

3 85. Paragraph 85 selectively quotes from, describes, summarizes, and characterizes a  
4 Federal Register notice of proposed rulemaking and other Federal Register documents, various  
5 proposed regulations, and the Consultation Agreement. The referenced materials speak for  
6 themselves and are the best evidence of their content. The Stewards deny any allegations  
7 inconsistent with the referenced materials.

8 86. Paragraph 86 selectively quotes from, describes, summarizes, and characterizes an  
9 Environmental Assessment (EA) and a Federal Register document. The referenced materials speak  
10 for themselves and are the best evidence of their content. The Stewards deny any allegations  
11 inconsistent with the referenced materials.

12 87. Paragraph 87 selectively quotes from, describes, summarizes, and characterizes an EA  
13 and a Federal Register document. The referenced materials speak for themselves and are the best  
14 evidence of their content. The Stewards deny any allegations inconsistent with the referenced  
15 materials.

16 88. Paragraph 88 selectively quotes from, describes, summarizes, and characterizes an EA  
17 and a Federal Register document. The referenced materials speak for themselves and are the best  
18 evidence of their content. The Stewards deny any allegations inconsistent with the referenced  
19 materials.

20 89. Paragraph 89 selectively quotes from, describes, summarizes, and characterizes an EA  
21 and a Federal Register document. The referenced materials speak for themselves and are the best  
22 evidence of their content. The Stewards deny any allegations inconsistent with the referenced  
23 materials.

24 90. Paragraph 90 selectively quotes from, describes, summarizes, and characterizes an EA  
25 and a Federal Register document. The referenced materials speak for themselves and are the best  
26 evidence of their content. The Stewards deny any allegations inconsistent with the referenced  
27 materials.

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1 91. Paragraph 91 selectively quotes from, describes, summarizes, and characterizes an EA  
2 and a Federal Register document. The referenced materials speak for themselves and are the best  
3 evidence of their content. The Stewards deny any allegations inconsistent with the referenced  
4 materials.

5 92. Paragraph 92 selectively quotes from, describes, summarizes, and characterizes a final  
6 rule and preamble published in the Federal Register. The rule and preamble speak for themselves  
7 and are the best evidence of their content. The Stewards deny any allegations inconsistent with the  
8 final rule and preamble.

9 93. Paragraph 93 selectively quotes from, describes, summarizes, and characterizes a final  
10 rule and preamble published in the Federal Register. The rule and preamble speak for themselves  
11 and are the best evidence of their content. The Stewards deny any allegations inconsistent with the  
12 final rule and preamble.

13 94. Paragraph 94 selectively quotes from, describes, summarizes, and characterizes a final  
14 rule and preamble published in the Federal Register. The rule and preamble speak for themselves  
15 and are the best evidence of their content. The Stewards deny any allegations inconsistent with the  
16 final rule and preamble.

17 95. Paragraph 95 selectively quotes from, describes, summarizes, and characterizes a final  
18 rule and preamble published in the Federal Register. The rule and preamble speak for themselves  
19 and are the best evidence of their content. The Stewards deny any allegations inconsistent with the  
20 final rule and preamble.

21 96. The Stewards admit that, on August 26, 2004, EPA, the NOAA Fisheries Services, and  
22 the Fish and Wildlife Service entered into the Consultation Agreement. The document speaks for  
23 itself and is the best evidence of its content. The Stewards deny any allegations of the first sentence  
24 inconsistent with the document. The Stewards lack sufficient information to form a belief as to the  
25 truth of the allegations in the second sentence.

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**CAUSE OF ACTION—COUNT I**

97. Paragraph 97 selectively quotes from and summarizes provisions of the ESA. The ESA speaks for itself and is the best evidence of its content. The Stewards deny any allegations inconsistent with the ESA.

98. Paragraph 98 describes, summarizes, and characterizes the joint counterpart regulations, the Consultation Agreement, and the ESA. The joint counterpart regulations, the Consultation Agreement, and the ESA speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the joint counterpart regulations, the Consultation Agreement, and the ESA.

99. Paragraph 99 describes, summarizes, and characterizes the joint counterpart regulations, the Consultation Agreement, and the ESA. The joint counterpart regulations, the Consultation Agreement, and the ESA speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the joint counterpart regulations, the Consultation Agreement, and the ESA.

100. Paragraph 100 describes, summarizes, and characterizes the joint counterpart regulations, the Consultation Agreement, and the ESA. The joint counterpart regulations, the Consultation Agreement, and the ESA speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the joint counterpart regulations, the Consultation Agreement, and the ESA.

101. Paragraph 101 states a legal conclusion, which requires no response. Insofar as it contains factual allegations, they are denied.

**CAUSE OF ACTION—COUNT II**

102. Paragraph 102 selectively quotes from and summarizes provisions of the ESA. The ESA speaks for itself and is the best evidence of its content. The Stewards deny any allegations inconsistent with the statute.

103. The first three sentences consist of Plaintiffs' characterization of "insure," which requires no response. In as much as Plaintiffs rely on the cited dictionary definition, that dictionary speaks for itself and is the best evidence of its content. The Stewards deny any allegations of the



1 first three sentences inconsistent with the cited dictionary. The fourth sentence states a legal  
2 conclusion, which requires no response.

3 104. Paragraph 104 describes, summarizes, and characterizes the joint counterpart  
4 regulations, the Consultation Agreement, and the ESA. The joint counterpart regulations, the  
5 Consultation Agreement, and the ESA speak for themselves and are the best evidence of their  
6 content. The Stewards deny any allegations inconsistent with the counterpart regulations, the  
7 Consultation Agreement, and the ESA.

8 105. Paragraph 105 describes, summarizes, and characterizes the joint counterpart  
9 regulations, the Consultation Agreement, and the ESA. The joint counterpart regulations, the  
10 Consultation Agreement, and the ESA speak for themselves and are the best evidence of their  
11 content. The Stewards deny any allegations inconsistent with the counterpart regulations, the  
12 Consultation Agreement, and the ESA.

13 106. Paragraph 106 describes, summarizes, and characterizes the joint counterpart  
14 regulations, the Consultation Agreement, and the ESA. The joint counterpart regulations, the  
15 Consultation Agreement, and the ESA speak for themselves and are the best evidence of their  
16 content. The Stewards deny any allegations inconsistent with the counterpart regulations, the  
17 Consultation Agreement, and the ESA.

18 107. Paragraph 107 describes, summarizes, and characterizes the joint counterpart  
19 regulations, the Consultation Agreement, and the ESA. The joint counterpart regulations, the  
20 Consultation Agreement, and the ESA speak for themselves and are the best evidence of their  
21 content. The Stewards deny any allegations inconsistent with the counterpart regulations, the  
22 Consultation Agreement, and the ESA.

23 108. Paragraph 108 describes, summarizes, and characterizes the joint counterpart  
24 regulations, the Consultation Agreement, and the ESA. The joint counterpart regulations, the  
25 Consultation Agreement, and the ESA speak for themselves and are the best evidence of their  
26 content. The Stewards deny any allegations inconsistent with the counterpart regulations, the  
27 Consultation Agreement, and the ESA.

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1 109. Paragraph 109 describes, summarizes, and characterizes the joint counterpart  
2 regulations, the Consultation Agreement, and the ESA. The joint counterpart regulations, the  
3 Consultation Agreement, and the ESA speak for themselves and are the best evidence of their  
4 content. The Stewards deny any allegations inconsistent with the counterpart regulations, the  
5 Consultation Agreement, and the ESA.

6 110. Paragraph 110 describes, summarizes, and characterizes the joint counterpart  
7 regulations, the Consultation Agreement, and the ESA. The joint counterpart regulations, the  
8 Consultation Agreement, and the ESA speak for themselves and are the best evidence of their  
9 content. The Stewards deny any allegations inconsistent with the counterpart regulations, the  
10 Consultation Agreement, and the ESA.

11 111. Paragraph 111 states a legal conclusion, which requires no response. Insofar as it  
12 contains factual allegations, they are denied.

13 **CAUSE OF ACTION—COUNT III**

14 112. Paragraph 112 selectively quotes from and summarizes provisions of the ESA. The  
15 ESA speaks for itself and is the best evidence of its content. The Stewards deny any allegations  
16 inconsistent with the ESA.

17 113. Denied.

18 114. Paragraph 114 describes, summarizes, and characterizes the joint counterpart  
19 regulations and the ESA. The joint counterpart regulations and the ESA speak for themselves and  
20 are the best evidence of their content. The Stewards deny any allegations inconsistent with the joint  
21 counterpart regulations and the ESA.

22 115. Paragraph 115 describes, summarizes, and characterizes the joint counterpart  
23 regulations, EPA's risk assessment process, and the Consultation Agreement, which speak for  
24 themselves and are the best evidence of their content. The Stewards deny any allegations  
25 inconsistent with the regulations and other referenced materials. Further, insofar as Paragraph 115  
26 contains factual allegations, the Stewards lack sufficient information to form a belief as to the truth  
27 of those allegations.

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116. Paragraph 116 describes, summarizes, and characterizes the joint counterpart regulations, EPA's risk assessment process, and the Consultation Agreement, which speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the regulations and other referenced materials. Further, insofar as Paragraph 116 contains factual allegations, the Stewards lack sufficient information to form a belief as to the truth of those allegations.

117. Paragraph 117 describes, summarizes, and characterizes the joint counterpart regulations, EPA's risk assessment process, and the Consultation Agreement, which speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the regulations and other referenced materials. Further, insofar as Paragraph 117 contains factual allegations, the Stewards lack sufficient information to form a belief as to the truth of those allegations.

118. Paragraph 118 describes, summarizes, and characterizes the joint counterpart regulations, EPA's risk assessment process, and the Consultation Agreement, which speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the regulations and other referenced materials. Further, insofar as Paragraph 118 contains factual allegations, the Stewards lack sufficient information to form a belief as to the truth of those allegations.

119. Paragraph 119 describes, summarizes, and characterizes the joint counterpart regulations, EPA's risk assessment process, and the Consultation Agreement, which speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the regulations and other referenced materials. Further, insofar as Paragraph 119 contains factual allegations, the Stewards lack sufficient information to form a belief as to the truth of those allegations.

120. Paragraph 120 describes, summarizes, and characterizes the joint counterpart regulations, EPA's risk assessment process, and the Consultation Agreement, which speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the regulations and other referenced materials. Further, insofar as Paragraph 120

1 contains factual allegations, the Stewards lack sufficient information to form a belief as to the truth  
2 of those allegations.

3 121. Paragraph 121 describes, summarizes, and characterizes the joint counterpart  
4 regulations, EPA's risk assessment process, and the Consultation Agreement, which speak for  
5 themselves and are the best evidence of their content. The Stewards deny any allegations  
6 inconsistent with the regulations and other referenced materials. Further, insofar as Paragraph 121  
7 contains factual allegations, the Stewards lack sufficient information to form a belief as to the truth  
8 of those allegations.

9 122. Paragraph 122 states a legal conclusion, which requires no response. In as much as  
10 Paragraph 122 contains factual allegations, the Stewards deny those allegations.

11 **CAUSE OF ACTION—COUNT IV**

12 123. Paragraph 123 describes, summarizes, and characterizes the joint counterpart  
13 regulations and other regulations, the Consultation Agreement, and the ESA. The regulations, the  
14 Consultation Agreement, and the ESA speak for themselves and are the best evidence of their  
15 content. The Stewards deny any allegations inconsistent with the regulations, the Consultation  
16 Agreement, and the ESA.

17 124. Paragraph 124 describes, summarizes, and characterizes the joint counterpart  
18 regulations and other regulations, the Consultation Agreement, and the ESA. The regulations, the  
19 Consultation Agreement, and the ESA speak for themselves and are the best evidence of their  
20 content. The Stewards deny any allegations inconsistent with the regulations, the Consultation  
21 Agreement, and the ESA.

22 125. Paragraph 125 describes, summarizes, and characterizes the joint counterpart  
23 regulations and other regulations, the Consultation Agreement, and the ESA. The regulations, the  
24 Consultation Agreement, and the ESA speak for themselves and are the best evidence of their  
25 content. The Stewards deny any allegations inconsistent with the regulations, the Consultation  
26 Agreement, and the ESA.

27 126. Paragraph 126 describes, summarizes, and characterizes the joint counterpart  
28 regulations and other regulations, the Consultation Agreement, and the ESA. The regulations, the

1 Consultation Agreement, and the ESA speak for themselves and are the best evidence of their  
2 content. The Stewards deny any allegations inconsistent with the regulations, the Consultation  
3 Agreement, and the ESA.

4 127. Paragraph 127 describes, summarizes, and characterizes the joint counterpart  
5 regulations and other regulations, the Consultation Agreement, and the ESA. The regulations, the  
6 Consultation Agreement, and the ESA speak for themselves and are the best evidence of their  
7 content. The Stewards deny any allegations inconsistent with the regulations, the Consultation  
8 Agreement, and the ESA.

9 128. Paragraph 128 states a legal conclusion, which requires no response. In as much  
10 as Paragraph 128 contains factual allegations, they are denied.

11 **CAUSE OF ACTION—COUNT V**

12 129. Paragraph 129 describes, summarizes, and characterizes the joint counterpart  
13 regulations, the EPA's risk assessment process, and the ESA. The regulations, the process, and the  
14 ESA speak for themselves and are the best evidence of their content. The Stewards deny any  
15 allegations inconsistent with the regulations, the Overview document, and the ESA.

16 130. Paragraph 130 describes, summarizes, and characterizes the joint counterpart  
17 regulations, the EPA's risk assessment process, and the ESA. The regulations, the process, and the  
18 ESA speak for themselves and are the best evidence of their content. The Stewards deny any  
19 allegations inconsistent with the regulations, the Overview document, and the ESA.

20 131. Paragraph 131 describes, summarizes, and characterizes the joint counterpart  
21 regulations, the EPA's risk assessment process, and the ESA. The regulations, the process, and the  
22 ESA speak for themselves and are the best evidence of their content. The Stewards deny any  
23 allegations inconsistent with the regulations, the Overview document, and the ESA.

24 132. Paragraph 132 describes, summarizes, and characterizes the joint counterpart  
25 regulations, the EPA's risk assessment process, and the ESA. The regulations, the process, and the  
26 ESA speak for themselves and are the best evidence of their content. The Stewards deny any  
27 allegations inconsistent with the regulations, the Overview document, and the ESA.

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133. Paragraph 133 describes, summarizes, and characterizes the joint counterpart regulations, the EPA's risk assessment process, and the ESA. The regulations, the process, and the ESA speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the regulations, the Overview document, and the ESA.

134. Paragraph 134 states a legal conclusion, which requires no response. Insofar as Paragraph 134 contains factual allegations, those allegations are denied.

#### **CAUSE OF ACTION—COUNT VI**

135. Paragraph 135 describes, summarizes, and characterizes the joint counterpart regulations and other regulations, which speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the regulations.

136. Paragraph 136 selectively quotes from the Services' Consultation Handbook and from a dictionary, both of which speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the referenced materials.

137. Paragraph 137 quotes from, describes, summarizes, and characterizes the Consultation Handbook, which speaks for itself and is the best evidence of its content. The Stewards deny any allegations inconsistent with the Consultation Handbook.

138. Paragraph 138 quotes from, describes, summarizes, and characterizes the Consultation Handbook, which speaks for itself and is the best evidence of its content. The Stewards deny any allegations inconsistent with the Consultation Handbook.

139. Paragraph 139 quotes from, describes, summarizes, and characterizes the joint counterpart regulations and other regulations, which speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the regulations.

140. Paragraph 140 quotes from, describes, summarizes, and characterizes the joint counterpart regulations and other regulations, which speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the regulations.

141. Paragraph 141 states a legal conclusion, which requires no response. Insofar as Paragraph 141 contains factual allegations, the Stewards deny the allegations.

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**CAUSE OF ACTION—COUNT VII**

142. Paragraph 142 quotes from, describes, summarizes, and characterizes the National Environmental Policy Act (NEPA) and regulations implementing NEPA, which speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with NEPA and the implementing regulations.

143. Paragraph 143 quotes from, describes, summarizes, and characterizes NEPA and regulations implementing NEPA, which speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with NEPA and the implementing regulations.

144. The first and last sentences of Paragraph 144 state legal conclusions, which require no response. The remaining sentences of Paragraph 144 purport to describe the EA for the joint counterpart regulations and the Services' rationale for the EA. The EA speaks for itself and is the best evidence of its content. The Stewards deny any allegations in these sentences inconsistent with the EA.

145. Paragraph 145 quotes from, describes, summarizes, and characterizes regulations implementing NEPA, which speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with the regulations.

146. Paragraph 146 quotes from, describes, summarizes, and characterizes the EA, which speaks for itself and is the best evidence of its content. The Stewards deny any allegations inconsistent with the EA.

147. Paragraph 147 quotes from, describes, summarizes, and characterizes the EA, which speaks for itself and is the best evidence of its content. The Stewards deny any allegations inconsistent with the EA.

148. Paragraph 148 describes, summarizes, and characterizes NEPA and regulations implementing NEPA, which speak for themselves and are the best evidence of their content. The Stewards deny any allegations inconsistent with NEPA and the implementing regulations.

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149. Paragraph 149 consists of Plaintiffs' views on the legality and advisability of the joint counterpart regulations under NEPA, which require no response. Insofar as a response is deemed necessary, the allegations are denied.

150. The first sentence states a legal conclusion, which requires no response. The remaining sentences quote from, describe, summarize, and characterize the Federal Register preamble to the joint counterpart regulations, which speaks for itself and is the best evidence of its content. The Stewards deny any allegations inconsistent with the referenced preamble.

151. Paragraph 151 states a legal conclusion, which requires no response. Insofar as Paragraph 151 contains factual allegations, they are denied.

The remainder of Plaintiffs' complaint consists of the Prayer for Relief, which requires no response.

#### **GENERAL DENIAL**

The Stewards deny each and every allegation in Plaintiffs' complaint not specifically admitted.

#### **AFFIRMATIVE DEFENSES**

##### **First Affirmative Defense**

Plaintiffs lack standing to raise some or all of their claims.

##### **Second Affirmative Defense**

Some or all of Plaintiffs' claims are not ripe for review.

##### **Third Affirmative Defense**

Plaintiffs fail to state a claim upon which relief can be granted.

#### **WHEREFORE,**

The Stewards respectfully request that this Court:

1. Deny all relief sought by Plaintiffs;
2. Grant judgment to Defendants, Defendant-Intervenors, and the Stewards;

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1 3. Grant Defendants, Defendant-Intervenors, and the Stewards such additional relief as the  
2 Court may deem just and proper.

3 DATED: January 25, 2005.

4 Respectfully submitted,

7  
8 RUSSELL C. BROOKS, WSBA No. 29811  
9 Pacific Legal Foundation  
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12 Telephone: (425) 576-0484

13 Attorney for Defendant-Intervenors  
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**DECLARATION OF SERVICE**

I, Russell C. Brooks, declare as follows:

I am a resident of the State of Washington, residing or employed in Bellevue, Washington. I am over the age of 18 years and am not a party to the above-entitled action. My business address is 10940 NE 33rd place, Suite 109, Bellevue, Washington 98004.

On January 24, 2005, ANSWER OF WASHINGTON FRIENDS OF FARMS AND FORESTS, WASHINGTON STATE POTATO COMMISSION, NATIONAL POTATO COUNCIL, WASHINGTON STATE FARM BUREAU, IDAHO FARM BUREAU FEDERATION, WASHINGTON ASSOCIATION OF WHEAT GROWERS, WASHINGTON STATE DAIRY FEDERATION, WESTERN WASHINGTON GOLF COURSE SUPERINTENDENTS ASSOCIATION, HOP GROWERS OF WASHINGTON, AND WASHINGTON STATE HORTICULTURAL ASSOCIATION was filed via the Court's electronic filing system, which will automatically generate service upon the counsel identified below:

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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 25th day of January, 2005, at Bellevue, Washington.

\_\_\_\_\_  
RUSSELL C. BROOKS